



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FAX (202-654-6211) and FIRST CLASS MAIL

Robert Bauer, Esq.
Rebecca H. Gordon, Esq.
Graham Wilson, Esq.
Perkins Coie
700 Thirteenth Street, NW
Washington, DC 20005

DEC 10 2012

RE: MURs 6078, 6090, 6108, 6139, 6142, and
6214 and AF 2512
Obama for America and Martin Nesbitt, in
his official capacity as Treasurer
Obama Victory Fund and Andrew Tobias, in
his official capacity as Treasurer

Dear Messrs. Bauer and Wilson and Ms. Gordon:

On December 7, 2012, the Federal Election Commission accepted the signed conciliation agreement on behalf of your client, Obama for America and Martin H. Nesbitt in his official capacity as Treasurer, in settlement of a violation of 2 U.S.C. §§ 434(a), 434(b), and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended. This agreement resolves the violations arising from each of the above-referenced Matters Under Review and Administrative Fine #2512. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

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Robert Bauer, Esq.
Rebecca H. Gordon, Esq.
Graham Wilson, Esq.
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Enclosed you will find a copy of the fully executed conciliation agreement for your files.
If you have any questions, please contact me at (202) 694-1650.

Sincerely,



Camilla Jackson Jones
Attorney

Enclosure
Conciliation Agreement

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4 **BEFORE THE FEDERAL ELECTION COMMISSION**

5 In the Matters of) MURs 6078, 6090, 6108, 6139, 6142, 6214,
6) and AF# 2512
7 Obama for America and)
8 Martin Nesbitt in his)
9 official capacity as Treasurer)
10)

11 **CONCILIATION AGREEMENT**

12
13 This Conciliation Agreement reflects the final resolution of six separate complaints filed
14 with the Federal Election Commission (the "FEC" or the "Commission") concerning
15 contributions received during the 2008 presidential campaign by Obama for America and Martin
16 Nesbitt in his official capacity as Treasurer ("Respondents" or "OFA") and issues identified in
17 the Final Audit Report of the Commission on Obama for America (Jan. 16, 2007-Dec. 31, 2008).

18 The Commission found reason to believe that Respondents violated 2 U.S.C. § 441a(f) of
19 the Federal Election Campaign Act of 1971, as amended ("the Act"), by accepting contributions
20 in excess of the limits applicable to the 2008 presidential election that were not resolved through
21 refund, redesignation, or reattribution within the 60 day period permitted under the Act.

22 The Commission also found reason to believe that Respondents violated 2 U.S.C.
23 § 434(b) by misreporting the date of contributions received through its joint fundraising
24 representative, the Obama Victory Fund ("OVF"). Although OFA correctly reported the date
25 OVF transferred those funds to OFA as required, it incorrectly identified the date of receipt of
26 the underlying contributions as the date of the transfer from OVF to OFA, rather than the date
27 that the contributions were originally received by OVF.

28 The Commission has further found reason to believe that Respondents failed to file
29 certain 48-Hour Notices of contributions of \$1,000 or more received after the 20th day but more

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1 than 48 hours before the 2008 general election, in violation of 2 U.S.C. § 434(a)(6)(A), and
2 referred the violation to the Reports Analysis Division.

3 In response to a request from Respondents, on July 10, 2012, the Commission approved
4 merging conciliation of Administrative Fine Matter #2512 ("AF# 2512") with MURs 6078,
5 6090, 6108, 6142, and 6214 and authorized the Reports Analysis Division to transfer AF# 2512
6 to the Office of General Counsel.

7 NOW, THEREFORE, the Commission and Respondents, having participated in informal
8 methods of conciliation prior to a finding of probable cause to believe, do hereby agree as
9 follows:

10 I. The Commission has jurisdiction over the Respondents and the subject matter of
11 this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.
12 § 437g(a)(4)(A)(i).

13 II. Respondents have had a reasonable opportunity to demonstrate that no action
14 should be taken in this matter.

15 III. Respondents enter voluntarily into this agreement with the Commission.

16 IV. The pertinent facts and law in this matter are as follows:

17 1. OFA is the principal campaign committee for President Barack Obama.
18 Martin Nesbitt is the treasurer of OFA. From 2007 to 2008, OFA reported raising approximately
19 \$745 million in contributions from more than 4 million separate contributors.

20 2. OVF is a joint fundraising committee established pursuant to 11 C.F.R.
21 § 102.17, whose participants were OFA and the Democratic National Committee ("DNC").
22 Andrew Tobias is the current treasurer of OVF. During the 2008 election cycle, OVF reported

1 that it raised over \$198 million in contributions, of which \$85,158,116 were transferred to OFA
2 on various dates in 2008.

3 Untimely Resolution of Excessive Contributions

4 3. During the 2008 election cycle, the Act prohibited any person from
5 making contributions to a candidate for federal office or the candidate's authorized political
6 committee that in the aggregate exceeded \$2,500 each for the primary and general elections.
7 2 U.S.C. § 441a(a)(1)(A). As a corollary, it was unlawful for a candidate for federal office or the
8 candidate's authorized political committee to accept contributions that in the aggregate exceeded
9 \$2,300 each for the 2008 primary and general elections. 2 U.S.C. § 441a(f).

10 4. OFA was limited to accepting contributions from individual donors that in
11 the aggregate did not exceed \$2,300 each for the primary and general elections. 2 U.S.C.
12 § 441a(a)(1)(A). Where a committee receives an excessive contribution, the Commission's
13 regulations give the committee 60 days from the date of receipt to identify and resolve the
14 excessive contribution via refund, redesignation, or reattribution of the excessive amount.
15 11 C.F.R. §§ 103.3(b)(3), 110.1(b).

16 5. From 2007 to 2008, OFA accepted a total of \$1,363,529 in contributions
17 that exceeded the limits set forth in 2 U.S.C. § 441a(a)(1)(A) and that were not resolved through
18 refund, redesignation, or reattribution within 60 days of receipt as permitted under the Act.
19 Respondents contend these excessive contributions represent approximately .18% of all
20 contributions received by OFA during the 2008 election cycle.

21 6. OFA has since resolved the \$1,363,529 in excessive contributions through
22 the untimely refund, redesignation, or reattribution of those contributions. Of that amount, OFA
23 resolved \$489,616 before any Commission investigation took place and another \$873,913 after

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1 receiving the Commission's analysis of information contained in the disclosure reports and
2 internal records of OFA.

3 Misreporting Dates of Contributions

4 7. The Act requires all political committees to publicly report all of their
5 receipts and disbursements. 2 U.S.C. § 434. Each report must disclose for the reporting period
6 and calendar year the total amount of all receipts and the total amount of all disbursements.
7 2 U.S.C. § 434(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

8 8. The Act requires that an authorized committee of a candidate report the
9 amount of all receipts from transfers by affiliated committees, as well as the identity of the
10 affiliated committee and the date of each transfer. 2 U.S.C. § 434(b)(2)(F), (3)(D); 11 C.F.R.
11 §§ 102.17(c)(3)(iii), (8)(i)(B), 104.3(a)(4), 104.8.

12 9. Commission regulations permit political committees to engage in joint
13 fundraising with other political committees or with unregistered committees or organizations.
14 11 C.F.R. § 102.17. After a joint fundraising representative distributes the net proceeds, a
15 participating political committee is required to report its share of funds received as a transfer-in
16 from the fundraising representative. *Id.*

17 10. For contribution reporting and limitation purposes, the date a contribution
18 is received by the joint fundraising representative — not the date received by the recipient
19 political committee — is the date that the contribution is received by the participating political
20 committee. 11 C.F.R. §§ 102.17(c)(3)(iii), (c)(8). The participating political committee is
21 required to report the original date of receipt of the proceeds only after the funds have been
22 transferred from the fundraising representative. *Id.*

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11. For the \$85,158,116 in contributions received in transfers from OVF, Respondents reported the dates that the contributions were transferred to OFA, rather than the dates on which the underlying contributions were received by OVF, as required by 2 U.S.C. § 434(b)(2), (4) and 11 C.F.R. §§ 102.17(c), 104.3(a), (b).

48-Hour Notices

12. The Act requires that a candidate's principal campaign committee shall notify the Commission of all contributions of \$1,000 or more, received by any authorized committee of the candidate less than 20 days but more than 48 hours before any election in which the candidate is running. 11 C.F.R. §104.5(f).

13. Respondents did not file 48-Hour Notices for 1,266 contributions totaling approximately \$1,895,956. See Final Audit Report of Commission on Obama for America (Jan. 16, 2007-Dec. 31, 2008); AF# 2512. Respondents have waived their right to appeal the \$191,135 administrative fine assessed in AF# 2512, and are paying the full amount of the fine as part of the penalty set forth in this agreement.

14. The Commission found that the majority of the contributions for which 48-Hour Notices were required but not filed, including 711 contributions totaling approximately \$1,046,045, arose from transfers from OVF.

V. In the interest of resolving this matter promptly, Respondents admit the following:

1. Respondents violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 103.3(b)(3), 110.1(b) by accepting \$1,363,529 in excessive contributions, which they failed to refund, redesignate, or reattribute within 60 days of receipt, as required by the Act.

2. Respondents violated 2 U.S.C. § 434(b) and 11 C.F.R. §§ 102.17(c), 104.3(a)(3) by misreporting the original date of receipt for contributions received through OVF.

3. Respondents violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-Hour Notices for contributions totaling \$1,895,956.

VI. 1. Respondents will pay a penalty of three hundred and seventy-five thousand dollars (\$375,000) to resolve both the complaint-generated matters and the administrative fine determination pursuant to 2 U.S.C. §§ 437g(a)(4) and (5)(A). The administrative fine accounts for \$191,135 of the total penalty.

2. Respondents will cease and desist from violating 2 U.S.C. §§ 434(a), (b) and 441a(f).

3. Respondents will file with the Commission, in coordination with the Reports Analysis Division, an amendment to OFA's 2008 30 Day Post-General report that will identify the joint fundraising representative's original date of receipt for those contributions that are the subject of the reporting errors addressed in this conciliation agreement.

4. Respondents will confirm that they have refunded as necessary any contributions identified in the Section 437g audit as excessive and have amended their relevant disclosure reports. Respondents will disgorge to the U.S. Treasury any refunded contributions that the contributor fails to negotiate within thirty (30) days of the effective date of this agreement and will provide evidence of any disgorgement (copies of front and back of negotiated check) to the Commission.

VII. The Commission on its own motion or upon request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein may review the Respondents' compliance with this agreement. If the Commission believes that this agreement or any of its requirements has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

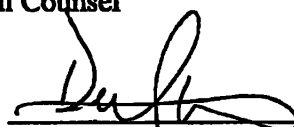
IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Anthony Herman
General Counsel

BY:


Daniel A. Petalas
Associate General Counsel
for Enforcement

12-7-12
Date

FOR THE RESPONDENTS:


Obama for America and
Martin Nesbitt in his official
capacity as Treasurer

11-14-12
Date